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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,082	04/15/2004	Timothy C. Wang	UMY-043	1338

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LAHIVE & COCKFIELD
28 STATE STREET
BOSTON, MA 02109

EXAMINER

BELYAVSKIY, MICHAIL A

ART UNIT	PAPER NUMBER
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1644

DATE MAILED: 08/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/826,082

Applicant(s)

WANG ET AL.

Examiner

Michail A. Belyavskyi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-36 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

1. Claims 1-36 are pending.

Restriction Requirement

2. Restriction to one of the following inventions is required under 35 U.S.C. § 121:
- I. Claims 2-4, 13-22, 28-33 and 36 drawn to a method of determining whether a subject has an bone marrow derived stem cell dependent metaplasia, comprising detecting the presence of BMDC polypeptide classified in Class 435, subclass 7.1, 372
 - II. Claims 5-7, drawn to a method for assessing the efficacy of a treatment for cancer and a method for monitoring the progression of a BMDC-associated cancer, classified in Class 435, subclass 7.1, 372.
 - III. Claim 8, drawn to a method for selecting for a composition for treating BMDC, comprising determining whether the test compound reduces proliferation of the cells, classified in Class 435, subclass 375.
 - IV. Claim 9, drawn to a method for selecting for a composition for treating BMDC, comprising determining whether the test compound increases the differentiation of the cells, classified in Class 435, subclass 377.
 - V. Claims 10-12, drawn to a method of treating a subject, comprising administering a BMDC modulator to the subject, classified in Class 424, subclass 184.1.
 - VI. Claims 23- 26 drawn to a method of determining whether a subject has an bone marrow derived stem cell dependent metaplasia, comprising detecting the presence of BMDC nucleic acid classified in Class 435, subclass 6.
 - VII. Claim 27, drawn to a kit, classified in Class 435, subclass 810.
 - VIII. Claims 34 and 35, drawn to a method of treating a chronic inflammatory condition, comprising administering a transfected BMDC to the subject, classified in Class 424, subclass 577.

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3. Claim 1 link inventions of Groups I and VI. The restriction requirement between the linked inventions is subject to the nonallowance of the linking claim(s) 1. Upon the allowance of the linking claim(s), the restriction requirement as to the linked inventions shall be withdrawn and any claim(s) depending from or otherwise including all the limitations of the allowable linking claim(s) will be entitled to examination in the instant application. Applicant(s) are advised that if any such claim(s) depending from or including all the limitations of the allowable linking claim(s) is/are presented in a continuation or divisional application, the claims of the continuation or divisional application may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Where a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. *In re Ziegler*, 44 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

4. Groups I- VI and VIII are different methods. These inventions are different with respect to ingredients, method steps, and endpoints which require non-coextensive searches ; therefore, each method is patentably distinct.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).

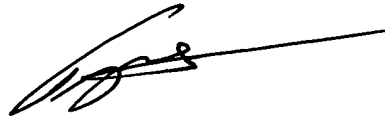
6. Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed.

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michail Belyavskyi whose telephone number is 571/ 272-0840. The examiner can normally be reached Monday through Friday from 9:00 AM to 5:30 PM. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on 571/ 272-0841.

The fax number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



MICHAIL BELYAVSKYI, PH.D.
PATENT EXAMINER

8/28/06